

Code of Federal Regulations

TITLE 15--COMMERCE AND FOREIGN TRADE

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ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 922--NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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Authority: 16 U.S.C. 1431 et seq.

Source: 60 FR 66877, Dec. 27, 1995, unless otherwise noted.

Subpart A--General

Editorial Note: Nomenclature changes to part 922 appear at 62 FR 3789, Jan. 27, 1997; 62 FR 67724, Dec. 30, 1997.

Sec. 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D and E apply to all eleven National Marine Sanctuaries for which site-specific regulations appear in subparts F through P, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.1 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D and E apply to all twelve National Marine Sanctuaries for which site-specific regulations appear in subparts F through Q, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

Sec. 922.2 Mission, goals, and special policies.

(a) In accordance with the standards set forth in title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, also known as the National Marine Sanctuaries Act (Act) the mission of the National Marine Sanctuary program (Program) is to identify, designate and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

(b) The goals of the Program are to carry out the mission to:

- (1) Identify and designate as National Marine Sanctuaries areas of the marine environment which are of special national significance;
- (2) Provide authority for comprehensive and coordinated conservation

and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

(3) Support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;

(4) Enhance public awareness, understanding, appreciation, and wise use of the marine environment;

(5) Facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

(6) Develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

(7) Create models of, and incentives for, ways to conserve and manage these areas;

(8) Cooperate with global programs encouraging conservation of marine resources; and

(9) Maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.

(c) To the extent consistent with the policies set forth in the Act, in carrying out the Program's mission and goals:

(1) Particular attention will be given to the establishment and management of marine areas as National Marine Sanctuaries for the protection of the area's natural resource and ecosystem values; particularly for ecologically or economically important or threatened species or species assemblages, and for offshore areas where there are no existing special area protection mechanisms;

(2) The size of a National Marine Sanctuary, while highly dependent on the nature of the site's resources, will be no larger than necessary to ensure effective management;

(d) Management efforts will be coordinated to the extent practicable with other countries managing marine protected areas;

(e) Program regulations, policies, standards, guidelines, and procedures under the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., the Archeological and Historical Preservation Act of 1974, 16 U.S.C. 469 et seq., and the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa et seq. The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended, to the extent practicable, to historical resources in the marine environment within the boundaries of designated National Marine Sanctuaries. The management of historical resources under the

authority of the Act shall be consistent, to the extent practicable, with the Federal archeological program by consulting the Uniform Regulations, ARPA (43 CFR part 7) and other relevant Federal regulations. The Secretary of the Interior's Standards and Guidelines for Archeology may also be consulted for guidance. These guidelines are available from the Office of Ocean and Coastal Management at (301) 713-3125.

Sec. 922.3 Definitions.

Act means title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 et seq., also known as the National Marine Sanctuaries Act.

Active Candidate means a site selected by the Secretary from the Site Evaluation List for further consideration for possible designation as a National Marine Sanctuary.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), or designee.

Benthic community means the assemblage of organisms, substrate, and structural formations found at or near the bottom that is periodically or permanently covered by water.

Commercial fishing means any activity that results in the sale or trade for intended profit of fish, shellfish, algae, or corals.

Conventional hook and line gear means any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hind- or electrically operated, hand-held or mounted. This term does not include bottom longlines.

Cultural resources means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.

Director means, except where otherwise specified, the Director of the Office of Ocean and Coastal Resource Management, NOAA, or designee.

Exclusive economic zone means the exclusive economic zone as defined in the Magnuson Fishery Conservation and Management Act, 16 U.S. 1801 et seq.

Fish wastes means waste materials resulting from commercial fish processing operations.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include "submerged cultural resources", and also include "historical properties," as defined in the National Historic Preservation Act, as amended, and its implementing regulations, as amended.

Indian tribe means any American Indian tribe, band, group, or

community recognized as such by the Secretary of the Interior.

Injure means to change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of. This includes, but is not limited to, to cause the loss of or destroy.

Lightering means at-sea transfer of petroleum-based products, materials, or other matter from vessel to vessel.

Marine means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law.

Mineral means clay, stone, sand, gravel, metalliferous ore, non-metalliferous ore, or any other solid material or other matter of commercial value.

National historic landmark means a district, site, building, structure or object designated as such by the Secretary of the Interior under the National Historic Landmarks Program (36 CFR part 65).

National Marine Sanctuary means an area of the marine environment of special national significance due to its resource or human-use values, which is designated as such to ensure its conservation and management.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, of any State or local unit of government, or of any foreign government.

Regional Fishery Management Council means any fishery council established under section 302 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

Sanctuary quality means any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.

Sanctuary resource means any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources.

Secretary means the Secretary of the United States Department of Commerce, or designee.

Shunt means to discharge expended drilling cuttings and fluids near the ocean seafloor.

Site Evaluation List (SEL) means a list of selected natural and historical resource sites selected by the Secretary as qualifying for further evaluation for possible designation as National Marine Sanctuaries.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern

Mariana Islands, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

Subsistence use means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles; and for barter, if for food or non-edible items other than money, if the exchange is of a limited and non-commercial nature.

Take or taking means: (1) For any marine mammal, sea turtle, or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct; (2) For any other marine mammal, sea turtle, or seabird, to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct. For the purposes of both (1) and (2) of this definition, this includes, but is not limited to, to collect any dead or injured marine mammal, sea turtle or seabird, or any part thereof; to restrain or detain any marine mammal, sea turtle or seabird, or any part thereof, no matter how temporarily; to tag any sea turtle, marine mammal or seabird; to operate a vessel or aircraft or to do any other act that results in the disturbance or molestation of any marine mammal, sea turtle or seabird.

Tropical fish means fish of minimal sport and food value, usually brightly colored, often used for aquaria purposes and which lives in a direct relationship with live bottom communities.

Vessel means a watercraft of any description capable of being used as a means of transportation in/ on the waters of a Sanctuary.
[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

Sec. 922.4 Effect of National Marine Sanctuary designation.

The designation of a National Marine Sanctuary, and the regulations implementing it, are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of the United States for designated sites beyond the U.S. territorial sea, and the regulations implementing the designation shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with:

- (a) Generally recognized principles of international law;
- (b) An agreement between the United States and the foreign state of which the person is a citizen; or
- (c) An agreement between the United States and the flag state of the foreign vessel, if the person is a crew member of the vessel.

Subpart B--Site Evaluation List (SEL)

Sec. 922.10 General.

(a) The Site Evaluation List (SEL) was established as a comprehensive list of marine sites with high natural resource values and with historical qualities of special national significance that are highly qualified for further evaluation for possible designation as National Marine Sanctuaries.

(b) The SEL is currently inactive. Criteria for inclusion of marine sites on a revised SEL will be issued, with public notice and opportunity to comment, when the Director determines that the SEL should be reactivated.

(c) Only sites on the SEL may be considered for subsequent review as active candidates for designation.

(d) Placement of a site on the SEL, or selection of a site from the SEL as an active candidate for designation as provided for in Sec. 922.21, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

Subpart C--Designation of National Marine Sanctuaries

Sec. 922.20 Standards and procedures for designation.

In designating a National Marine Sanctuary, the Secretary shall apply the standards and procedures set forth in section 303 and section 304 of the Act.

Sec. 922.21 Selection of active candidates.

(a) The Secretary shall, from time to time, select a limited number of sites from the SEL for Active Candidate consideration based on a preliminary assessment of the designation standards set forth in section 303 of the Act.

(b) Selection of a site as an Active Candidate shall begin the formal Sanctuary designation-evaluation process. A notice of intent to prepare a draft environmental impact statement shall be published in the Federal Register and in newspapers in the area(s) of local concern. A brief written analysis describing the site shall be provided. The Secretary, at any time, may drop a site from consideration if the Secretary determines that the site does not meet the designation standards and criteria set forth in the Act.

Sec. 922.22 Development of designation materials.

(a) In designating a National Marine Sanctuary, the Secretary shall prepare the designation materials described in section 304 of the Act.

(b) If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional

Fishery Management Council(s) which shall have one hundred and twenty (120) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishery regulations and to submit them to the Secretary. In preparing its recommendations and draft regulations, the Council(s) shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed Sanctuary designation. Fishery activities not proposed for regulation under section 304(a)(5) of the Act may be listed in the draft Sanctuary designation document as potentially subject to regulation, without following the procedures specified in section 304(a)(5) of the Act. If the Secretary subsequently determines that regulation of any such fishery activity is necessary, then the procedures specified in section 304(a)(5) of the Act shall be followed.

Sec. 922.23 Coordination with States and other Federal agencies.

(a) The Secretary shall consult and cooperate with affected States throughout the National Marine Sanctuary designation process. In particular the Secretary shall:

(1) Consult with the relevant State officials prior to selecting any site on the SEL as an Active Candidate pursuant to Sec. 922.21, especially concerning the relationship of any site to State waters and the consistency of the proposed designation with a federally approved State coastal zone management program. For the purposes of a consistency review by States with federally approved coastal zone management programs, designation of a National Marine Sanctuary is deemed to be a Federal activity, which, if affecting the State's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved State coastal zone program as provided by section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended, and implementing regulations at 15 CFR part 930, subpart.

(2) Ensure that relevant State agencies are consulted prior to holding any public hearings pursuant to section 304(a)(3) of the Act.

(3) Provide the Governor(s) of any State(s) in which a proposed Sanctuary would be located an opportunity to certify the designation or any of its terms as unacceptable as specified in section 304(b)(1) of the Act.

(b) The Secretary shall develop proposed regulations relating to activities under the jurisdiction of one or more other Federal agencies in consultation with those agencies.

Sec. 922.24 Congressional documents.

In designating a National Marine Sanctuary, the Secretary shall prepare and submit to Congress those documents described in section 304 of the Act.

Sec. 922.25 Designation determination and findings.

(a) In designating a National Marine Sanctuary, the Secretary shall prepare a written Designation Determination and Findings which shall include those findings and determinations described in section 303 of the Act.

(b) In addition to those factors set forth in section 303 of the Act, the Secretary, when making a designation determination, shall consider the Program's fiscal capability to manage the area as a National Marine Sanctuary.

Subpart D--Management Plan Development and Implementation

Sec. 922.30 General.

(a) The Secretary shall implement each management plan, and applicable regulations, including carrying out surveillance and enforcement activities and conducting such research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of the Act.

(b) Consistent with Sanctuary management plans, the Secretary shall develop and implement site-specific contingency and emergency-response plans designed to protect Sanctuary resources. The plans shall contain alert procedures and actions to be taken in the event of an emergency such as a shipwreck or an oil spill.

Sec. 922.31 Promotion and coordination of Sanctuary use.

The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of National Marine Sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, or other persons to promote use of one or more Sanctuaries for research, monitoring and education, including coordination with the National Estuarine Research Reserve System.

Subpart E--Regulations of General Applicability

Sec. 922.40 Purpose.

The purpose of the regulations in this subpart and in subparts F through P of this part is to implement the designations of the 11 National Marine Sanctuaries for which site specific regulations appear in subparts F through P of this part, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys National Marine Sanctuary are found at Sec. 922.160.

[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.40 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.40 Purpose.

The purpose of the regulations in this subpart and in subparts F through Q is to implement the designations of the 12 National Marine Sanctuaries for which site specific regulations appear in subparts F through Q, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries are found at Secs. 922.160, and 922.180, respectively.
[62 FR 14815, Mar. 28, 1997]

Sec. 922.41 Boundaries.

The boundary for each of the 11 National Marine Sanctuaries covered by this part is described in subparts F through P of this part, respectively.
[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.41 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.41 Boundaries.

The boundary for each of the 12 National Marine Sanctuaries covered by this part is described in subparts F through Q, respectively.
[62 FR 14815, Mar. 28, 1997]

Sec. 922.42 Allowed activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in subparts F through P of this part, subject to any emergency regulations promulgated pursuant to Secs. 922.44, 922.111(c), or Sec. 922.165, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject

to the provisions of section 312 of the Act. The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.
[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.42 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.42 Allowed activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in subparts F through Q, subject to any emergency regulations promulgated pursuant to Secs. 922.44, 922.111(c), 922.165, or 922.186, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject to the provisions of section 312 of the Act. The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.
[62 FR 14815, Mar. 28, 1997]

Sec. 922.43 Prohibited or otherwise regulated activities.

Subparts F through P of this part set forth site-specific regulations applicable to the activities specified therein.
[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.43 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.43 Prohibited or otherwise regulated activities.

Subparts F through Q set forth site-specific regulations applicable to the activities specified therein.
[62 FR 14815, Mar. 28, 1997]

Sec. 922.44 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank and Florida Keys National Marine Sanctuaries. See Secs. 922.111(c) and 922.165, respectively, for the authority to issue emergency regulations

with respect to those sanctuaries.
[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.44 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.44 Emergency Regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank, Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries. See Secs. 922.111(c), 922.165, and 922.186, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.
[62 FR 14815, Mar. 28, 1997]

Sec. 922.45 Penalties.

(a) Each violation of the NMSA or FKNMSPA, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than \$ 100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions, and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

Sec. 922.46 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury.

Sec. 922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

(a) Leases, permits, licenses, or rights of subsistence use or access in existence on the date of designation of any National Marine Sanctuary shall not be terminated by the Director. The Director may, however,

regulate the exercise of such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

(b) The prohibitions listed in subparts F through P of this part do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in this subpart P, and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P of this part, and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as the Director deems necessary to achieve the purposes for which the Sanctuary was designated.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

Sec. 922.48 National Marine Sanctuary permits--application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by subparts F through O of this part if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O of this part. For the Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by subpart P if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under Sec. 922.166.

(b) Applications for permits to conduct activities otherwise prohibited by subparts F through O of this part should be addressed to the Director and sent to the address specified in subparts F through O of this part. An application must include:

(1) A detailed description of the proposed activity including a timetable for completion;

(2) The equipment, personnel and methodology to be employed;

(3) The qualifications and experience of all personnel;

(4) The potential effects of the activity, if any, on Sanctuary resources and qualities; and

(5) Copies of all other required licenses, permits, approvals or other authorizations.

(c) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons or entity, within or outside the Federal government, and may hold a public hearing, as deemed appropriate.

(d) The Director, at his or her discretion, may issue a permit,

subject to such terms and conditions as he or she deems appropriate, to conduct a prohibited activity, in accordance with the criteria found in subparts F through O. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

(e) A permit granted pursuant to this section is nontransferable.

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or subparts F through O or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

Sec. 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by subparts L through P of this part if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in subpart P of this part, provided that:

(1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P of this part, whichever is later;

(2) The applicant complies with the other provisions of this Sec. 922.49;

(3) The Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and

(4) The applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by subparts L through P of this part.

(c) Notification of filings of applications should be sent to the Director, Office of Ocean and Coastal Resource Management at the address

specified in subparts L through P of this part. A copy of the application must accompany the notification.

(d) The Director may request additional information from the applicant as he or she deems reasonably necessary to determine whether to object to issuance of an authorization described in paragraph (a) of this section, or what terms and conditions are reasonably necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the application.

(e) The Director shall notify, in writing, the agency to which application has been made of his or her pending review of the application and possible objection to issuance. Upon completion of review of the application and information received with respect thereto, the Director shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems reasonably necessary to protect Sanctuary resources and qualities, and reasons therefor.

(f) The Director may amend the terms and conditions deemed reasonably necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this Sec. 922.49 may be extended by the Director for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the provisions of Sec. 922.50.

[62 FR 4608, Jan. 30, 1997]

Sec. 922.50 Appeals of administrative action.

(a)(1) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit pursuant to section 310 of the Act; a person requesting certification of an existing lease, permit, license or right of subsistence use or access under Sec. 922.47; or, for those Sanctuaries described in subparts L through P, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator:

(i) The granting, denial, conditioning, amendment, suspension or revocation by the Director of a National Marine Sanctuary or Special Use permit;

(ii) The conditioning, amendment, suspension or revocation of a certification under Sec. 922.47; or

(iii) For those Sanctuaries described in subparts L through P, the objection to issuance of or the imposition of terms and conditions on a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(2) For those National Marine Sanctuaries described in subparts F through K, any interested person may also appeal the same actions described in paragraphs (a)(1) (i) and (ii) of this section. For appeals arising from actions taken with respect to these National Marine Sanctuaries, the term "appellant" includes any such interested persons.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director. Appeals should be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910.

(c)(1) The Assistant Administrator may request the appellant to submit such information as the Assistant Administrator deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. For the Monitor National Marine Sanctuary, if the appellant has requested a hearing, the Assistant Administrator shall grant an informal hearing. For all other National Marine Sanctuaries, the Assistant Administrator may determine whether to hold an informal hearing on the appeal. If the Assistant Administrator determines that an informal hearing should be held, the Assistant Administrator may designate an officer before whom the hearing shall be held.

(2) The hearing officer shall give notice in the Federal Register of the time, place and subject matter of the hearing. The appellant and the Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator.

(d) The Assistant Administrator shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator shall notify the appellant of the final decision and the reason(s) therefore in writing. The Assistant Administrator's decision shall constitute final agency action for the purpose of the Administrative Procedure Act.

(e) Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal may be extended by the Assistant Administrator or hearing office for good cause.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4608, Jan. 30, 1997]

Subpart P--Florida Keys National Marine Sanctuary

Source: 62 FR 32161, June 12, 1997, unless otherwise noted.

Sec. 922.160 Purpose.

(a) The purpose of the regulations in this subpart is to implement the comprehensive management plan for the Florida Keys National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary is designated, in order to protect, preserve and manage the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of the area. In particular, the regulations in this part are intended to protect, restore, and enhance the living resources of the Sanctuary, to contribute to the maintenance of natural assemblages of living resources for future generations, to provide places for species dependent on such living resources to survive and propagate, to facilitate to the extent compatible with the primary objective of resource protection all public and private uses of the resources of the Sanctuary not prohibited pursuant to other authorities, to reduce conflicts between such compatible uses, and to achieve the other policies and purposes of the Florida Keys National Marine Sanctuary and Protection Act and the National Marine Sanctuaries Act.

(b) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the regulations in their entirety with any proposed changes thereto, including those regulations in subparts A and E of this part that apply to the Sanctuary. The Governor of the State of Florida will have the opportunity to review the re-proposed regulations before they take effect and if the Governor certifies such regulations as unacceptable, they will not take effect in State waters of the Sanctuary.

Sec. 922.161 Boundary.

The Sanctuary consists of all submerged lands and waters from the mean high water mark to the boundary described in Appendix I to this subpart, with the exception of areas within the Dry Tortugas National Park. Appendix I to this subpart sets forth the precise Sanctuary boundary established by the Florida Keys National Marine Sanctuary and Protection Act. (See FKNMSPA Sec. 5(b)(2)).

Sec. 922.162 Definitions.

(a) The following definitions apply to the Florida Keys National Marine Sanctuary regulations. To the extent that a definition appears in Sec. 922.3 and this section, the definition in this section governs.

Acts means the Florida Keys National Marine Sanctuary and Protection Act, as amended, (FKNMSPA) (Pub. L. 101-605), and the National Marine Sanctuaries Act (NMSA), also known as Title III of the Marine Protection, Research, and Sanctuaries Act, as amended, (MPRSA) (16

U.S.C. 1431 et seq.).

Adverse effect means any factor, force, or action that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms any Sanctuary resource, as defined in section 302(8) of the NMSA (16 U.S.C. 1432(8)) and in this section, or any of the qualities, values, or purposes for which the Sanctuary is designated.

Airboat means a vessel operated by means of a motor driven propeller that pushes air for momentum.

Areas To Be Avoided means the areas in which vessel operations are prohibited pursuant to section 6(a)(1) of the FKNMSPA (see Sec. 922.164(a)). Appendix VII to this subpart sets forth the geographic coordinates of these areas, including any modifications thereto made in accordance with section 6(a)(3) of the FKNMSPA.

Closed means all entry or use is prohibited.

Coral means the corals of the Class Hydrozoa (stinging and hydrocorals); the Class Anthozoa, Subclass Hexacorallia, Order Scleractinia (stony corals) and Antipatharia (black corals).

Coral area means marine habitat where coral growth abounds including patch reefs, outer bank reefs, deepwater banks, and hardbottoms.

Coral reefs means the hard bottoms, deep-water banks, patch reefs, and outer bank reefs.

Ecological Reserve means an area of the Sanctuary consisting of contiguous, diverse habitats, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, intended to minimize human influences, to provide natural spawning, nursery, and permanent residence areas for the replenishment and genetic protection of marine life, and also to protect and preserve natural assemblages of habitats and species within areas representing a broad diversity of resources and habitats found within the Sanctuary. Appendix IV to this subpart sets forth the geographic coordinates of these areas.

Existing Management Area means an area of the Sanctuary that is within or is a resource management area established by NOAA or by another Federal authority of competent jurisdiction as of the effective date of these regulations where protections above and beyond those provided by Sanctuary-wide prohibitions and restrictions are needed to adequately protect resources. Appendix II to this subpart sets forth the geographic coordinates of these areas.

Exotic species means a species of plant, invertebrate, fish, amphibian, reptile or mammal whose natural zoogeographic range would not have included the waters of the Atlantic Ocean, Caribbean, or Gulf of Mexico without passive or active introduction to such area through anthropogenic means.

Fish means finfish, mollusks, crustaceans, and all forms of marine animal and plant life other than marine mammals and birds.

Fishing means:

(1) The catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; any other activity which can reasonably be expected to result in the catching, taking, or harvesting

of fish; or any operation at sea in support of, or in preparation for, any activity described in this subparagraph (1).

(2) Such term does not include any scientific research activity which is conducted by a scientific research vessel.

Hardbottom means a submerged marine community comprised of organisms attached to exposed solid rock substrate. Hardbottom is the substrate to which corals may attach but does not include the corals themselves.

Idle speed only/no-wake means a speed at which a boat is operated that is no greater than 4 knots or does not produce a wake.

Idle speed only/no-wake zone means a portion of the Sanctuary where the speed at which a boat is operated may be no greater than 4 knots or may not produce a wake.

Live rock means any living marine organism or an assemblage thereof attached to a hard substrate, including dead coral or rock but not individual mollusk shells (e.g., scallops, clams, oysters). Living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to: sea anemones (Phylum Cnidaria: Class Anthozoa: Order Actinaria); sponges (Phylum Porifera); tube worms (Phylum Annelida), including fan worms, feather duster worms, and Christmas tree worms; bryozoans (Phylum Bryozoa); sea squirts (Phylum Chordata); and marine algae, including Mermaid's fan and cups (*Udotea* spp.), coralline algae, green feather, green grape algae (*Caulerpa* spp.) and watercress (*Halimeda* spp.).

Marine life species means any species of fish, invertebrate, or plant included in sections (2), (3), or (4) of Rule 46-42.001, Florida Administrative Code, reprinted in Appendix VIII to this subpart.

Military activity means an activity conducted by the Department of Defense with or without participation by foreign forces, other than civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers.

No-access buffer zone means a portion of the Sanctuary where vessels are prohibited from entering regardless of the method of propulsion.

No motor zone means an area of the Sanctuary where the use of internal combustion motors is prohibited. A vessel with an internal combustion motor may access a no motor zone only through the use of a push pole, paddle, sail, electric motor or similar means of operation but is prohibited from using its internal combustion motor.

Not available for immediate use means not readily accessible for immediate use, e.g., by being stowed unbaited in a cabin, locker, rod holder, or similar storage area, or by being securely covered and lashed to a deck or bulkhead.

Officially marked channel means a channel marked by Federal, State of Florida, or Monroe County officials of competent jurisdiction with navigational aids except for channels marked idle speed only/no wake.

Personal watercraft means any jet or air-powered watercraft operated by standing, sitting, or kneeling on or behind the vessel, in contrast to a conventional boat, where the operator stands or sits inside the vessel, and that uses an inboard engine to power a water jet pump for propulsion, instead of a propeller as in a conventional boat.

Prop dredging means the use of a vessel's propulsion wash to dredge or otherwise alter the seabed of the Sanctuary. Prop dredging includes, but is not limited to, the use of propulsion wash deflectors or similar means of dredging or otherwise altering the seabed of the Sanctuary. Prop dredging does not include the disturbance to bottom sediments resulting from normal vessel propulsion.

Prop scarring means the injury to seagrasses or other immobile organisms attached to the seabed of the Sanctuary caused by operation of a vessel in a manner that allows its propeller or other running gear, or any part thereof, to cause such injury (e.g., cutting seagrass rhizomes). Prop scarring does not include minor disturbances to bottom sediments or seagrass blades resulting from normal vessel propulsion.

Residential shoreline means any man-made or natural:

- (1) Shoreline,
- (2) Canal mouth,
- (3) Basin, or
- (4) Cove adjacent to any residential land use district, including improved subdivision, suburban residential or suburban residential limited, sparsely settled, urban residential, and urban residential mobile home under the Monroe County land development regulations.

Sanctuary means the Florida Keys National Marine Sanctuary.

Sanctuary Preservation Area means an area of the Sanctuary that encompasses a discrete, biologically important area, within which uses are subject to conditions, restrictions and prohibitions, including access restrictions, to avoid concentrations of uses that could result in significant declines in species populations or habitat, to reduce conflicts between uses, to protect areas that are critical for sustaining important marine species or habitats, or to provide opportunities for scientific research. Appendix V to this subpart sets forth the geographic coordinates of these areas.

Sanctuary wildlife means any species of fauna, including avifauna, that occupy or utilize the submerged resources of the Sanctuary as nursery areas, feeding grounds, nesting sites, shelter, or other habitat during any portion of their life cycles.

Seagrass means any species of marine angiosperms (flowering plants) that inhabit portions of the seabed in the Sanctuary. Those species include, but are not limited to: *Thalassia testudinum* (turtle grass); *Syringodium filiforme* (manatee grass); *Halodule wrightii* (shoal grass); *Halophila decipiens*, *H. engelmannii*, *H. johnsonii*; and *Ruppia maritima*.

Special-use Area means an area of the Sanctuary set aside for scientific research and educational purposes, recovery or restoration of Sanctuary resources, monitoring, to prevent use or user conflicts, to facilitate access and use, or to promote public use and understanding of Sanctuary resources. Appendix VI to this subpart sets forth the geographic coordinates of these areas.

Tank vessel means any vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that--

- (1) Is a United States flag vessel;

(2) Operates on the navigable waters of the United States; or
(3) Transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States [46 U.S.C. 2101].

Traditional fishing means those commercial or recreational fishing activities that were customarily conducted within the Sanctuary prior to its designation as identified in the Environmental Impact Statement and Management Plan for this Sanctuary.

Tropical fish means any species included in section (2) of Rule 46-42.001, Florida Administrative Code, reproduced in Appendix VIII to this subpart, or any part thereof.

Vessel means a watercraft of any description, including, but not limited to, motorized and non-motorized watercraft, personal watercraft, airboats, and float planes while maneuvering on the water, capable of being used as a means of transportation in/on the waters of the Sanctuary. For purposes of this part, the terms "vessel," "watercraft," and "boat" have the same meaning.

Wildlife Management Area means an area of the Sanctuary established for the management, protection, and preservation of Sanctuary wildlife resources, including such an area established for the protection and preservation of endangered or threatened species or their habitats, within which access is restricted to minimize disturbances to Sanctuary wildlife; to ensure protection and preservation consistent with the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. Appendix III to this subpart lists these areas and their access restrictions.

(b) Other terms appearing in the regulations in this part are defined at 15 CFR 922.3, and/or in the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 33 U.S.C. 1401 et seq. and 16 U.S.C. 1431 et seq.

Sec. 922.163 Prohibited activities--Sanctuary-wide.

(a) Except as specified in paragraph (b) through (e) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Mineral and hydrocarbon exploration, development and production. Exploring for, developing, or producing minerals or hydrocarbons within the Sanctuary.

(2) Removal of, injury to, or possession of coral or live rock. (i) Moving, removing, taking, harvesting, damaging, disturbing, breaking, cutting, or otherwise injuring, or possessing (regardless of where taken from) any living or dead coral, or coral formation, or attempting any of these activities, except as permitted under 50 CFR part 638.

(ii) Harvesting, or attempting to harvest, any live rock from the Sanctuary, or possessing (regardless of where taken from) any live rock within the Sanctuary, except as authorized by a permit for the possession or harvest from aquaculture operations in the Exclusive Economic Zone, issued by the National Marine Fisheries Service pursuant to applicable regulations under the appropriate Fishery Management Plan,

or as authorized by the applicable State authority of competent jurisdiction within the Sanctuary for live rock cultured on State submerged lands leased from the State of Florida, pursuant to applicable State law. See Sec. 370.027, Florida Statutes and implementing regulations.

(3) Alteration of, or construction on, the seabed. Drilling into, dredging, or otherwise altering the seabed of the Sanctuary, or engaging in prop-dredging; or constructing, placing or abandoning any structure, material, or other matter on the seabed of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels in a manner not otherwise prohibited by this part (see Secs. 922.163(a)(5)(ii) and 922.164(d)(1)(v));

(ii) Traditional fishing activities not otherwise prohibited by this part;

(iii) Installation and maintenance of navigational aids by, or pursuant to valid authorization by, any Federal, State, or local authority of competent jurisdiction;

(iv) Harbor maintenance in areas necessarily associated with Federal water resource development projects in existence on July 1, 1997, including maintenance dredging of entrance channels and repair, replacement, or rehabilitation of breakwaters or jetties;

(v) Construction, repair, replacement, or rehabilitation of docks, seawalls, breakwaters, piers, or marinas with less than ten slips authorized by any valid lease, permit, license, approval, or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(4) Discharge or deposit of materials or other matter. (i) Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter, except:

(A) Fish, fish parts, chumming materials, or bait used or produced incidental to and while conducting a traditional fishing activity in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by a marine sanitation device approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, (FWPCA), 33 U.S.C. 1322 et seq.;

(C) Water generated by routine vessel operations (e.g., deck wash down and graywater as defined in section 312 of the FWPCA), excluding oily wastes from bilge pumping; or

(D) Cooling water from vessels or engine exhaust;

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter that subsequently enters the Sanctuary and injures a Sanctuary resource or quality, except those listed in paragraph (a)(4)(i) (A) through (D) of this section and those authorized under Monroe County land use permits or under State permits.

(5) Operation of vessels. (i) Operating a vessel in such a manner as to strike or otherwise injure coral, seagrass, or any other immobile organism attached to the seabed, including, but not limited to, operating a vessel in such a manner as to cause prop-scarring.

(ii) Having a vessel anchored on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen.

(iii) Except in officially marked channels, operating a vessel at a speed greater than 4 knots or in manner which creates a wake:

(A) Within an area designated idle speed only/no wake;

(B) Within 100 yards of navigational aids indicating emergent or shallow reefs (international diamond warning symbol);

(C) Within 100 feet of the red and white "divers down" flag (or the blue and white "alpha" flag in Federal waters);

(D) Within 100 yards of residential shorelines; or

(E) Within 100 yards of stationary vessels.

(iv) Operating a vessel in such a manner as to injure or take wading, roosting, or nesting birds or marine mammals.

(v) Operating a vessel in a manner which endangers life, limb, marine resources, or property.

(6) Conduct of diving/snorkeling without flag. Diving or snorkeling without flying in a conspicuous manner the red and white "divers down" flag (or the blue and white "alpha" flag in Federal waters).

(7) Release of exotic species. Introducing or releasing an exotic species of plant, invertebrate, fish, amphibian, or mammals into the Sanctuary.

(8) Damage or removal of markers. Marking, defacing, or damaging in any way or displacing, removing, or tampering with any official signs, notices, or placards, whether temporary or permanent, or with any navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment.

(9) Movement of, removal of, injury to, or possession of Sanctuary historical resources. Moving, removing, injuring, or possessing, or attempting to move, remove, injure, or possess, a Sanctuary historical resource.

(10) Take or possession of protected wildlife. Taking any marine mammal, sea turtle, or seabird in or above the Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 et seq., the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 et seq., and the Migratory Bird Treaty Act, as amended, (MBTA) 16 U.S.C. 703 et seq.

(11) Possession or use of explosives or electrical charges. Possessing, or using explosives, except powerheads, or releasing electrical charges within the Sanctuary.

(12) Harvest or possession of marine life species. Harvesting, possessing, or landing any marine life species, or part thereof, within the Sanctuary, except in accordance with rules 46-42.001 through 46-42.003, 46-42.0035, and 46-42.004 through 46-42.007, and 46.42.009 of the Florida Administrative Code, reproduced in Appendix VIII to this subpart, and such rules shall apply mutatis mutandis (with necessary editorial changes) to all Federal and State waters within the Sanctuary.

(13) Interference with law enforcement. Interfering with, obstructing, delaying or preventing an investigation, search, seizure,

or disposition of seized property in connection with enforcement of the Acts or any regulation or permit issued under the Acts.

(b) Notwithstanding the prohibitions in this section and in Sec. 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by, and conducted in accordance with the scope, purpose, terms, and conditions of, a National Marine Sanctuary permit issued pursuant to Sec. 922.166.

(c) Notwithstanding the prohibitions in this section and in Sec. 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on the effective date of these regulations, or by any valid right of subsistence use or access in existence on the effective date of these regulations, provided that the holder of such authorization or right complies with Sec. 922.167 and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as he or she deems reasonably necessary to achieve the purposes for which the Sanctuary was designated.

(d) Notwithstanding the prohibitions in this section and in Sec. 922.164, and any access and use restrictions imposed pursuant thereto, a person may conduct an activity specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of these regulations, provided that the applicant complies with Sec. 922.168, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of these regulations constitute authorizations issued after the effective date of these regulations.

(e)(1) All military activities shall be carried out in a manner that avoids to the maximum extent practical any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraph (a) of this section and Sec. 922.164 do not apply to existing classes of military activities which were conducted prior to the effective date of these regulations, as identified in the Environmental Impact Statement and Management Plan for the Sanctuary. New military activities in the Sanctuary are allowed and may be exempted from the prohibitions in paragraph (a) of this section and in Sec. 922.164 by the Director after consultation between the Director and the Department of Defense pursuant to section 304(d) of the NMSA. When a military activity is modified such that it is likely to destroy, cause the loss of, or injure a Sanctuary resource or quality in a manner significantly greater than was considered in a previous consultation under section 304(d) of the NMSA, or it is likely to destroy, cause the loss of, or injure a Sanctuary resource or quality not previously considered in a previous consultation under section

304(d) of the NMSA, the activity is considered a new activity for purposes of this paragraph. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practical any adverse impact on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to prevent, respond to or mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions contained in paragraph (a)(5) of this section do not apply to Federal, State and local officers while performing enforcement duties and/or responding to emergencies that threaten life, property, or the environment in their official capacity.

(g) Notwithstanding paragraph (b) of this section and paragraph (a) of Sec. 922.168, in no event may the Director issue a permit under Sec. 922.166 authorizing, or otherwise approve, the exploration for, leasing, development, or production of minerals or hydrocarbons within the Sanctuary, the disposal of dredged material within the Sanctuary other than in connection with beach renourishment or Sanctuary restoration projects, or the discharge of untreated or primary treated sewage (except by a certification, pursuant to Sec. 922.167, of a valid authorization in existence on the effective date of these regulations), and any purported authorizations issued by other authorities after the effective date of these regulations for any of these activities within the Sanctuary shall be invalid.

(h) Any amendment to these regulations shall not take effect in Florida State waters until approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida. Any fishery regulations in the Sanctuary shall not take effect in Florida State waters until established by the Florida Marine Fisheries Commission.

Sec. 922.164 Additional activity regulations by Sanctuary area.

In addition to the prohibitions set forth in Sec. 922.163, which apply throughout the Sanctuary, the following regulations apply with respect to activities conducted within the Sanctuary areas described in this section and in Appendix (II) through (VII) to this subpart. Activities located within two or more overlapping Sanctuary areas are concurrently subject to the regulations applicable to each overlapping area.

(a) Areas to be avoided. Operating a tank vessel or a vessel greater than 50 meters in registered length is prohibited in all areas to be avoided, except if such vessel is a public vessel and its operation is essential for national defense, law enforcement, or responses to emergencies that threaten life, property, or the environment. Appendix VII to this subpart sets forth the geographic coordinates of these

areas.

(b) Existing management areas.--(1) Key Largo and Looe Key Management Areas. The following activities are prohibited within the Key Largo and Looe Key Management Areas (also known as the Key Largo and Looe Key National Marine Sanctuaries) described in Appendix II to this subpart:

(i) Removing, taking, damaging, harmfully disturbing, breaking, cutting, spearing or similarly injuring any coral or other marine invertebrate, or any plant, soil, rock, or other material, except commercial taking of spiny lobster and stone crab by trap and recreational taking of spiny lobster by hand or by hand gear which is consistent with these regulations and the applicable regulations implementing the applicable Fishery Management Plan.

(ii) Taking any tropical fish.

(iii) Fishing with wire fish traps, bottom trawls, dredges, fish sleds, or similar vessel-towed or anchored bottom fishing gear or nets.

(iv) Fishing with, carrying or possessing, except while passing through without interruption or for law enforcement purposes: pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring-loaded guns or similar devices known as spearguns.

(2) Great White Heron and Key West National Wildlife Refuge Management Areas. Operating a personal watercraft, operating an airboat, or water skiing except within Township 66 South, Range 29 East, Sections 5, 11, 12 and 14; Township 66 South, Range 28 East, Section 2; Township 67 South, Range 26 East, Sections 16 and 20, all Tallahassee Meridian, are prohibited within the marine portions of the Great White Heron and Key West National Wildlife Refuge Management Areas described in Appendix II to this subpart.

(c) Wildlife management areas. (1) Marine portions of the Wildlife Management Areas listed in Appendix III to this subpart or portions thereof may be designated "idle speed only / no-wake," "no-motor" or "no-access buffer" zones or "closed". The Director, in cooperation with other Federal, State, or local resource management authorities, as appropriate, shall post signs conspicuously, using mounting posts, buoys, or other means according to location and purpose, at appropriate intervals and locations, clearly delineating an area as an "idle speed only / no wake", a "no-motor", or a "no-access buffer" zone or as "closed", and allowing instant, long-range recognition by boaters. Such signs shall display the official logo of the Sanctuary.

(2) The following activities are prohibited within the marine portions of the Wildlife Management Areas listed in Appendix III to this subpart:

(i) In those marine portions of any Wildlife Management Area designated an "idle speed only / no wake" zone in Appendix III to this subpart, operating a vessel at a speed greater than idle speed only / no wake.

(ii) In those marine portions of any Wildlife Management Area designated a "no-motor" zone in Appendix III to this subpart, using

internal combustion motors or engines for any purposes. A vessel with an internal combustion motor or engine may access a ``no-motor" zone only through the use of a push pole, paddle, sail, electric motor or similar means of propulsion.

(iii) In those marine portions of any Wildlife Management Area designated a ``no-access buffer" zone in Appendix III of this subpart, entering the area by vessel.

(iv) In those marine portions of any Wildlife Management Area designated as closed in Appendix III of this subpart, entering or using the area.

(3) The Director shall coordinate with other Federal, State, or local resource management authorities, as appropriate, in the establishment and enforcement of access restrictions described in paragraph (c)(2) (i)-(iv) of this section in the marine portions of Wildlife Management Areas.

(4) The Director may modify the number and location of access restrictions described in paragraph (c)(2) (i)-(iv) of this section within the marine portions of a Wildlife Management Area if the Director finds that such action is reasonably necessary to minimize disturbances to Sanctuary wildlife, or to ensure protection and preservation of Sanctuary wildlife consistent with the purposes of the Sanctuary designation and other applicable law governing the protection and preservation of wildlife resources in the Sanctuary. The Director will effect such modification by:

(i) Publishing in the Federal Register, after notice and an opportunity for public comments in accordance, an amendment to the list of such areas set forth in Appendix III to this subpart, and a notice regarding the time and place where maps depicting the precise locations of such restrictions will be made available for public inspection, and

(ii) Posting official signs delineating such restrictions in accordance with paragraph (c)(1) of this section.

(d) Ecological Reserves and Sanctuary Preservation Areas. (1) The following activities are prohibited within the Ecological Reserves described in Appendix IV to this subpart, and within the Sanctuary Preservation Areas, described in Appendix V to this subpart:

(i) Discharging or depositing any material or other matter except cooling water or engine exhaust.

(ii) Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities. However, fish, invertebrates, and marine plants may be possessed aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such resources can be shown not to have been harvested within, removed from, or taken within, the Ecological Reserve or Sanctuary Preservation Area, as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through such reserves or areas, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida

State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.

(iii) Except for catch and release fishing by trolling in the Conch Reef, Alligator Reef, Sombrero Reef, and Sand Key SPAs, fishing by any means. However, gear capable of harvesting fish may be aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such gear is not available for immediate use when entering and during transit through such Ecological Reserve or Sanctuary Preservation Area, and no presumption of fishing activity shall be drawn therefrom.

(iv) Touching living or dead coral, including but not limited to, standing on a living or dead coral formation.

(v) Placing any anchor in a way that allows the anchor or any portion of the anchor apparatus (including the anchor, chain or rope) to touch living or dead coral, or any attached organism. When anchoring dive boats, the first diver down must inspect the anchor to ensure that it is not touching living or dead coral, and will not shift in such a way as to touch such coral or other attached organisms. No further diving shall take place until the anchor is placed in accordance with these requirements.

(vi) Anchoring instead of mooring when a mooring buoy is available or anchoring in other than a designated anchoring area when such areas have been designated and are available.

(vii) Except for passage without interruption through the area, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of this section, violating a temporary access restriction imposed by the Director pursuant to paragraph (d)(2) of this section.

(2) The Director may temporarily restrict access to any portion of any Sanctuary Preservation Area or Ecological Reserve if the Director, on the basis of the best available data, information and studies, determines that a concentration of use appears to be causing or contributing to significant degradation of the living resources of the area and that such action is reasonably necessary to allow for recovery of the living resources of such area. The Director will provide for continuous monitoring of the area during the pendency of the restriction. The Director will provide public notice of the restriction by publishing a notice in the Federal Register, and by such other means as the Director may deem appropriate. The Director may only restrict access to an area for a period of 60 days, with one additional 60 day renewal. The Director may restrict access to an area for a longer period pursuant to a notice and opportunity for public comment rulemaking under the Administrative Procedure Act. Such restriction will be kept to the minimum amount of area necessary to achieve the purposes thereof.

(e) Special-use Areas. (1) The Director may set aside discrete areas of the Sanctuary as Special-use Areas, and, by designation pursuant to this paragraph, impose the access and use restrictions specified in paragraph (e)(3) of this section. Special-use Areas are described in Appendix VI to this subpart, in accordance with the following designations and corresponding objectives:

- (i) "Recovery area" to provide for the recovery of Sanctuary resources from degradation or other injury attributable to human uses;
- (ii) "Restoration area" to provide for restoration of degraded or otherwise injured Sanctuary resources;
- (iii) "Research-only area" to provide for scientific research or education relating to protection and management, through the issuance of a Sanctuary General permit for research pursuant to Sec. 922.166 of these regulations; and
- (iv) "Facilitated-use area" to provide for the prevention of use or user conflicts or the facilitation of access and use, or to promote public use and understanding, of Sanctuary resources through the issuance of special-use permits.

(2) A Special-use Area shall be no larger than the size the Director deems reasonably necessary to accomplish the applicable objective.

(3) Persons conducting activities within any Special-use Area shall comply with the access and use restrictions specified in this paragraph and made applicable to such area by means of its designation as a "recovery area," "restoration area," "research-only area," or "facilitated-use area." Except for passage without interruption through the area or for law enforcement purposes, no person may enter a Special-use Area except to conduct or cause to be conducted the following activities:

- (i) In such area designated as a "recovery area" or a "restoration area", habitat manipulation related to restoration of degraded or otherwise injured Sanctuary resources, or activities reasonably necessary to monitor recovery of degraded or otherwise injured Sanctuary resources;

- (ii) In such area designated as a "research only area", scientific research or educational use specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a valid National Marine Sanctuary General or Historical Resources permit, or

- (iii) In such area designated as a "facilitated-use area", activities specified by the Director or specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a valid Special-use permit.

(4)(i) The Director may modify the number of, location of, or designations applicable to, Special-use Areas by publishing in the Federal Register, after notice and an opportunity for public comment in accordance with the Administrative Procedure Act, an amendment to Appendix VI to this subpart, except that, with respect to such areas designated as a "recovery area," "restoration area," or "research only area," the Director may modify the number of, location of, or designation applicable to, such areas by publishing a notice of such action in the Federal Register if the Director determines that immediate action is reasonably necessary to:

- (A) Prevent significant injury to Sanctuary resources where circumstances create an imminent risk to such resources;

- (B) Initiate restoration activity where a delay in time would significantly impair the ability of such restoration activity to

succeed;

(C) Initiate research activity where an unforeseen natural event produces an opportunity for scientific research that may be lost if research is not initiated immediately.

(ii) If the Director determines that a notice of modification must be promulgated immediately in accordance with paragraph (e)(4)(i) of this section, the Director will, as part of the same notice, invite public comment and specify that comments will be received for 15 days after the effective date of the notice. As soon as practicable after the end of the comment period, the Director will either rescind, modify or allow the modification to remain unchanged through notice in the Federal Register.

(f) Additional Wildlife Management Areas, Ecological Reserves, Sanctuary Preservation Areas, or Special-use Areas, and additional restrictions in such areas, shall not take effect in Florida State waters unless first approved by the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.

Sec. 922.165 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. Emergency regulations shall not take effect in Florida territorial waters until approved by the Governor of the State of Florida. Any temporary regulation may be in effect for up to 60 days, with one 60-day extension. Additional or extended action will require notice and comment rulemaking under the Administrative Procedure Act, notice in local newspapers, notice to Mariners, and press releases.

Sec. 922.166 Permits--application procedures and issuance criteria.

(a) National Marine Sanctuary General Permit. (1) A person may conduct an activity prohibited by Secs. 922.163 or 922.164, other than an activity involving the survey/inventory, research/recovery, or deaccession/transfer of Sanctuary historical resources, if such activity is specifically authorized by, and provided such activity is conducted in accordance with the scope, purpose, terms and conditions of, a National Marine Sanctuary General permit issued under this paragraph (a).

(2) The Director, at his or her discretion, may issue a General permit under this paragraph (a), subject to such terms and conditions as he or she deems appropriate, if the Director finds that the activity will:

(i) Further research or monitoring related to Sanctuary resources and qualities;

(ii) Further the educational value of the Sanctuary;

(iii) Further the natural or historical resource value of the

Sanctuary;

(iv) Further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty;

(v) Assist in managing the Sanctuary; or

(vi) Otherwise further Sanctuary purposes, including facilitating multiple use of the Sanctuary, to the extent compatible with the primary objective of resource protection.

(3) The Director shall not issue a General permit under this paragraph (a), unless the Director also finds that:

(i) The applicant is professionally qualified to conduct and complete the proposed activity;

(ii) The applicant has adequate financial resources available to conduct and complete the proposed activity;

(iii) The duration of the proposed activity is no longer than necessary to achieve its stated purpose;

(iv) The methods and procedures proposed by the applicant are appropriate to achieve the proposed activity's goals in relation to the activity's impacts on Sanctuary resources and qualities;

(v) The proposed activity will be conducted in a manner compatible with the primary objective of protection of Sanctuary resources and qualities, considering the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities, any indirect, secondary or cumulative effects of the activity, and the duration of such effects;

(vi) It is necessary to conduct the proposed activity within the Sanctuary to achieve its purposes; and

(vii) The reasonably expected end value of the activity to the furtherance of Sanctuary goals and purposes outweighs any potential adverse impacts on Sanctuary resources and qualities from the conduct of the activity.

(4) For activities proposed to be conducted within any of the areas described in Sec. 922.164 (b)-(e), the Director shall not issue a permit unless he or she further finds that such activities will further and are consistent with the purposes for which such area was established, as described in Secs. 922.162 and 922.164 and in the management plan for the Sanctuary.

(b) National Marine Sanctuary Survey/Inventory of Historical Resources Permit. (1) A person may conduct an activity prohibited by Secs. 922.163 or 922.164 involving the survey/inventory of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Survey/Inventory of Historical Resources permit issued under this paragraph (b). Such permit is not required if such survey/inventory activity does not involve any activity prohibited by Secs. 922.163 or 922.164. Thus, survey/inventory activities that are non-intrusive, do not include any excavation, removal, or recovery of historical resources, and do not result in destruction of, loss of, or injury to Sanctuary resources or qualities do not require a permit. However, if a survey/inventory activity will involve test excavations or removal of artifacts or

materials for evaluative purposes, a Survey/Inventory of Historical Resources permit is required. Regardless of whether a Survey/Inventory permit is required, a person may request such permit. Persons who have demonstrated their professional abilities under a Survey/Inventory permit will be given preference over other persons in consideration of the issuance of a Research/Recovery permit. While a Survey/Inventory permit does not grant any rights with regards to areas subject to pre-existing rights of access which are still valid, once a permit is issued for an area, other survey/inventory permits will not be issued for the same area during the period for which the permit is valid.

(2) The Director, at his or her discretion, may issue a Survey/Inventory permit under this paragraph (b), subject to such terms and conditions as he or she deems appropriate, if the Director finds that such activity:

(i) Satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) Either will be non-intrusive, not include any excavation, removal, or recovery of historical resources, and not result in destruction of, loss of, or injury to Sanctuary resources or qualities, or if intrusive, will involve no more than the minimum manual alteration of the seabed and/or the removal of artifacts or other material necessary for evaluative purposes and will cause no significant adverse impacts on Sanctuary resources or qualities; and

(iii) That such activity will be conducted in accordance with all requirements of the Programmatic Agreement for the Management of Submerged Cultural Resources in the Florida Keys National Marine Sanctuary among NOAA, the Advisory Council on Historic Preservation, and the State of Florida (hereinafter SCR Agreement), and that such permit issuance is in accordance with such SCR Agreement. Copies of the SCR Agreement may also be examined at, and obtained from, the Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 1305 East-West Highway, 12th floor, Silver Spring, MD 20910; or from the Florida Keys National Marine Sanctuary Office, P.O. Box 500368, Marathon, FL 33050.

(c) National Marine Sanctuary Research/Recovery of Sanctuary Historical Resources Permit. (1) A person may conduct any activity prohibited by Secs. 922.163 or 922.164 involving the research/recovery of Sanctuary historical resources if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Research/Recovery of Historical Resources permit issued under this paragraph (c).

(2) The Director, at his or her discretion, may issue a Research/Recovery of Historical Resources permit, under this paragraph (c), and subject to such terms and conditions as he or she deems appropriate, if the Director finds that:

(i) Such activity satisfies the requirements for a permit issued under paragraph (a)(3) of this section;

(ii) The recovery of the resource is in the public interest as

described in the SCR Agreement;

(iii) Recovery of the resource is part of research to preserve historic information for public use; and

(iv) Recovery of the resource is necessary or appropriate to protect the resource, preserve historical information, and/or further the policies and purposes of the NMSA and the FKNMSPA, and that such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(d) National Marine Sanctuary Special-use Permit. (1) A person may conduct any commercial or concession-type activity prohibited by Secs. 922.163 or 922.164, if such activity is specifically authorized by, and is conducted in accordance with the scope, purpose, terms and conditions of, a Special-use permit issued under this paragraph (d). A Special-use permit is required for the deaccession/transfer of Sanctuary historical resources.

(2) The Director, at his or her discretion, may issue a Special-use permit in accordance with this paragraph (d), and subject to such terms and conditions as he or she deems appropriate and the mandatory terms and conditions of section 310 of the NMSA, if the Director finds that issuance of such permit is reasonably necessary to: establish conditions of access to and use of any Sanctuary resource; or promote public use and understanding of any Sanctuary resources. No permit may be issued unless the activity is compatible with the purposes for which the Sanctuary was designated and can be conducted in a manner that does not destroy, cause the loss of, or injure any Sanctuary resource, and if for the deaccession/transfer of Sanctuary Historical Resources, unless such permit issuance is in accordance with, and that the activity will be conducted in accordance with, all requirements of the SCR Agreement.

(3) The Director may assess and collect fees for the conduct of any activity authorized by a Special-use permit issued pursuant to this paragraph (d). No Special-use permit shall be effective until all assessed fees are paid, unless otherwise provided by the Director by a fee schedule set forth as a permit condition. In assessing a fee, the Director shall include:

(i) All costs incurred, or expected to be incurred, in reviewing and processing the permit application, including, but not limited to, costs for:

(A) Number of personnel;

(B) Personnel hours;

(C) Equipment;

(D) Biological assessments;

(E) Copying; and

(F) Overhead directly related to reviewing and processing the permit application;

(ii) All costs incurred, or expected to be incurred, as a direct result of the conduct of the activity for which the Special-use permit is being issued, including, but not limited to:

(A) The cost of monitoring the conduct both during the activity and after the activity is completed in order to assess the impacts to Sanctuary resources and qualities;

(B) The use of an official NOAA observer, including travel and expenses and personnel hours; and

(C) Overhead costs directly related to the permitted activity; and

(iii) An amount which represents the fair market value of the use of the Sanctuary resource and a reasonable return to the United States Government.

(4) Nothing in this paragraph (d) shall be considered to require a person to obtain a permit under this paragraph for the conduct of any fishing activities within the Sanctuary.

(e) Applications. (1) Applications for permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. All applications must include:

(i) A detailed description of the proposed activity including a timetable for completion of the activity and the equipment, personnel and methodology to be employed;

(ii) The qualifications and experience of all personnel;

(iii) The financial resources available to the applicant to conduct and complete the proposed activity;

(iv) A statement as to why it is necessary to conduct the activity within the Sanctuary;

(v) The potential impacts of the activity, if any, on Sanctuary resources and qualities;

(vi) The benefit to be derived from the activity; and

(vii) Such other information as the Director may request depending on the type of activity. Copies of all other required licenses, permits, approvals, or other authorizations must be attached to the application.

(2) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems reasonably necessary to act on the application and may seek the views of any persons. The Director may require a site visit as part of the permit evaluation. Unless otherwise specified, the information requested must be received by the Director within 30 days of the postmark date of the request. Failure to provide such additional information on a timely basis may be deemed by the Director to constitute abandonment or withdrawal of the permit application.

(f) A permit may be issued for a period not exceeding five years. All permits will be reviewed annually to determine the permittee's compliance with permit scope, purpose, terms and conditions and progress toward reaching the stated goals and appropriate action taken under paragraph (g) of this section if warranted. A permittee may request permit renewal pursuant to the same procedures for applying for a new permit. Upon the permittee's request for renewal, the Director shall review all reports submitted by the permittee as required by the permit conditions. In order to renew the permit, the Director must find that the:

(1) Activity will continue to further the purposes for which the Sanctuary was designated in accordance with the criteria applicable to the initial issuance of the permit;

(2) Permittee has at no time violated the permit, or these

regulations; and

(3) The activity has not resulted in any unforeseen adverse impacts to Sanctuary resources or qualities.

(g) The Director may amend, suspend, or revoke a permit for good cause. The Director may deny a permit application, in whole or in part, if it is determined that the permittee or applicant has acted in violation of a previous permit, of these regulations, of the NMSA or FKNMSPA, or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in Subpart D of 15 CFR part 904.

(h) The applicant for or holder of a National Marine Sanctuary permit may appeal the denial, conditioning, amendment, suspension or revocation of the permit in accordance with the procedures set forth in Sec. 922.50.

(i) A permit issued pursuant to this section other than a Special-use permit is nontransferable. Special-use permits may be transferred, sold, or assigned with the written approval of the Director. The permittee shall provide the Director with written notice of any proposed transfer, sale, or assignment no less than 30 days prior to its proposed consummation. Transfers, sales, or assignments consummated in violation of this requirement shall be considered a material breach of the Special-use permit, and the permit shall be considered void as of the consummation of any such transfer, sale, or assignment.

(j) The permit or a copy thereof shall be maintained in legible condition on board all vessels or aircraft used in the conduct of the permitted activity and be displayed for inspection upon the request of any authorized officer.

(k) Any permit issued pursuant to this section shall be subject to the following terms and conditions:

(1) All permitted activities shall be conducted in a manner that does not destroy, cause the loss of, or injure Sanctuary resources or qualities, except to the extent that such may be specifically authorized.

(2) The permittee agrees to hold the United States harmless against any claims arising out of the conduct of the permitted activities.

(3) All necessary Federal, State, and local permits from all agencies with jurisdiction over the proposed activities shall be secured before commencing field operations.

(l) In addition to the terms and conditions listed in paragraph (k) of this section, any permit authorizing the research/recovery of historical resources shall be subject to the following terms and conditions:

(1) A professional archaeologist shall be in charge of planning, field recovery operations, and research analysis.

(2) An agreement with a conservation laboratory shall be in place before field recovery operations are begun, and an approved nautical conservator shall be in charge of planning, conducting, and supervising

the conservation of any artifacts and other materials recovered.

(3) A curation agreement with a museum or facility for curation, public access and periodic public display, and maintenance of the recovered historical resources shall be in place before commencing field operations (such agreement for the curation and display of recovered historical resources may provide for the release of public artifacts for deaccession/transfer if such deaccession/transfer is consistent with preservation, research, education, or other purposes of the designation and management of the Sanctuary. Deaccession/transfer of historical resources requires a Special-use permit issued pursuant to paragraph (d) and such deaccession/transfer shall be executed in accordance with the requirements of the SCR Agreement).

(4) The site's archaeological information is fully documented, including measured drawings, site maps drawn to professional standards, and photographic records.

(m) In addition to the terms and conditions listed in paragraph (k) and (l) of this section, any permit issued pursuant to this section is subject to such other terms and conditions, including conditions governing access to, or use of, Sanctuary resources, as the Director deems reasonably necessary or appropriate and in furtherance of the purposes for which the Sanctuary is designated. Such terms and conditions may include, but are not limited to:

(1) Any data or information obtained under the permit shall be made available to the public.

(2) A NOAA official shall be allowed to observe any activity conducted under the permit.

(3) The permittee shall submit one or more reports on the status, progress, or results of any activity authorized by the permit.

(4) The permittee shall submit an annual report to the Director not later than December 31 of each year on activities conducted pursuant to the permit. The report shall describe all activities conducted under the permit and all revenues derived from such activities during the year and/or term of the permit.

(5) The permittee shall purchase and maintain general liability insurance or other acceptable security against potential claims for destruction, loss of, or injury to Sanctuary resources arising out of the permitted activities. The amount of insurance or security should be commensurate with an estimated value of the Sanctuary resources in the permitted area. A copy of the insurance policy or security instrument shall be submitted to the Director.

Sec. 922.167 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by Secs. 922.163 or 922.164 if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on July 1, 1997, or by any valid right of subsistence use or access in existence on July 1, 1997, provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of July 1, 1997, of the existence of such authorization or right and requests certification of such authorization or right;

(2) The holder complies with the other provisions of this Sec. 922.167; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by Secs. 922.163 or 922.164 may conduct the activity without being in violation of applicable provisions of Secs. 922.163 or 922.164, pending final agency action on his or her certification request, provided the holder is in compliance with this Sec. 922.167.

(c) Any holder of an authorization or right described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited by Secs. 922.163 or 922.164, thus requiring certification under this section.

(d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(f) The Director may amend any certification made under this Sec. 922.167 whenever additional information becomes available justifying such an amendment.

(g) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this Sec. 922.167, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(h) Any time limit prescribed in or established under this Sec. 922.167 may be extended by the Director for good cause.

(i) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in Sec. 922.50.

(j) Any amendment, renewal, or extension made after July 1, 1997, to a lease, permit, license, approval, other authorization or right is subject to the provisions of Sec. 922.49.

Appendix I to Subpart P of Part 922--Florida Keys National Marine
Sanctuary Boundary Coordinates

(Appendix Based on North American Datum of 1983)

The boundary of the Florida Keys National Marine Sanctuary--

(a) Begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 5 minutes west longitude, then runs eastward to the 300-foot isobath located at approximately 25 degrees 39 minutes north latitude, 80 degrees 4 minutes west longitude;

(b) Then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 4 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 5 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 7 minutes west longitude;

(iv) 25 degrees 16 minutes north latitude, 80 degrees 8 minutes west longitude;

(c) Then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 7 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 6 minutes west longitude,

(viii) 24 degrees 40 minutes north latitude, 83 degrees 6 minutes west longitude,

(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,

(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) after Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and

(g) then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

Appendix II to Subpart P of Part 922--Existing Management Areas Boundary Coordinates

The Existing Management Areas are located within the following geographic boundary coordinates:

National Oceanic and Atmospheric Administration,
Preexisting National Marine Sanctuaries:

Point	Latitude	Longitude
Key Largo Management Area (Key Largo National Marine Sanctuary)		
1.....	25 deg.19.45' N	80 deg.12.00' W
2.....	25 deg.16.02' N	80 deg.08.07' W
3.....	25 deg.07.05' N	80 deg.12.05' W
4.....	24 deg.58.03' N	80 deg.19.08' W
5.....	25 deg.02.02' N	80 deg.25.25' W
Looe Key Management Area (Looe Key National Marine Sanctuary)		
1.....	24 deg.31.62' N	81 deg.26.00' W
2.....	24 deg.33.57' N	81 deg.26.00' W
3.....	24 deg.34.15' N	81 deg.23.00' W
4.....	24 deg.32.20' N	81 deg.23.00' W
United States Fish and Wildlife Service: Great White Heron National Wildlife Refuge (based on the North American		

Datum of 1983)

1.....	24 deg.43.8' N	81 deg.48.6' W
2.....	24 deg.43.8' N	81 deg.37.2' W
3.....	24 deg.49.2' N	81 deg.37.2' W
4.....	24 deg.49.2' N	81 deg.19.8' W
5.....	24 deg.48.0' N	81 deg.19.8' W
6.....	24 deg.48.0' N	81 deg.14.4' W
7.....	24 deg.49.2' N	81 deg.14.4' W
8.....	24 deg.49.2' N	81 deg.08.4' W
9.....	24 deg.43.8' N	81 deg.08.4' W
10.....	24 deg.43.8' N	81 deg.14.4' W
11.....	24 deg.43.2' N	81 deg.14.4' W
12.....	24 deg.43.2' N	81 deg.16.2' W
13.....	24 deg.42.6' N	81 deg.16.2' W
14.....	24 deg.42.6' N	81 deg.21.0' W
15.....	24 deg.41.4' N	81 deg.21.0' W
16.....	24 deg.41.4' N	81 deg.22.2' W
17.....	24 deg.43.2' N	81 deg.22.2' W
18.....	24 deg.43.2' N	81 deg.22.8' W
19.....	24 deg.43.8' N	81 deg.22.8' W
20.....	24 deg.43.8' N	81 deg.24.0' W
21.....	24 deg.43.2' N	81 deg.24.0' W
22.....	24 deg.43.2' N	81 deg.26.4' W
23.....	24 deg.43.8' N	81 deg.26.4' W
24.....	24 deg.43.8' N	81 deg.27.0' W
25.....	24 deg.43.2' N	81 deg.27.0' W
26.....	24 deg.43.2' N	81 deg.29.4' W
27.....	24 deg.42.6' N	81 deg.29.4' W
28.....	24 deg.42.6' N	81 deg.30.6' W
29.....	24 deg.41.4' N	81 deg.30.6' W
30.....	24 deg.41.4' N	81 deg.31.2' W
31.....	24 deg.40.8' N	81 deg.31.2' W
32.....	24 deg.40.8' N	81 deg.32.4' W
33.....	24 deg.41.4' N	81 deg.32.4' W
34.....	24 deg.41.4' N	81 deg.34.2' W
35.....	24 deg.40.8' N	81 deg.34.2' W
36.....	24 deg.48.0' N	81 deg.35.4' W
37.....	24 deg.39.6' N	81 deg.35.4' W
38.....	24 deg.39.6' N	81 deg.36.0' W
39.....	24 deg.39.0' N	81 deg.36.0' W
40.....	24 deg.39.0' N	81 deg.37.2' W
41.....	24 deg.37.8' N	81 deg.37.2' W
42.....	24 deg.37.8' N	81 deg.37.8' W
43.....	24 deg.37.2' N	81 deg.37.8' W
44.....	24 deg.37.2' N	81 deg.40.2' W
45.....	24 deg.36.0' N	81 deg.40.2' W
46.....	24 deg.36.0' N	81 deg.40.8' W
47.....	24 deg.35.4' N	81 deg.40.8' W

48.....	24 deg.35.4' N	81 deg.42.0' W
49.....	24 deg.36.0' N	81 deg.42.0' W
50.....	24 deg.36.0' N	81 deg.48.6' W

Key West National Wildlife
Refuge

1.....	24 deg.40' N	81 deg.49' W
2.....	24 deg.40' N	82 deg.10' W
3.....	24 deg.27' N	82 deg.10' W
4.....	24 deg.27' N	81 deg.49' W

When differential Global Positioning Systems data becomes available, these coordinates may be revised by Federal Register notice to reflect the increased accuracy of such data.

Appendix III to Subpart P of Part 922--Wildlife Management Areas Access
Restrictions

Area	Access restrictions
Bay Keys.....	No-motor zone (300 feet) around one key; idle speed only/no-wake zones in tidal creeks.
Boca Grande Key.....	South one-half of beach closed (beach above mean high water closed by Department of the Interior).
Woman Key.....	One-half of beach and sand spit on southeast side closed (beach and sand spit above mean high water closed by Department of the Interior).
Cayo Agua Keys.....	Idle speed only/no-wake zones in all navigable tidal creeks.
Cotton Key.....	No-motor zone on tidal flat.

Snake Creek..... No-motor zone on tidal flat.

Cottrell Key..... No-motor zone (300 feet) around entire key.

Little Mullet Key..... No-access buffer zone (300 feet) around entire key.

Big Mullet Key..... No-motor zone (300 feet) around entire key.

Crocodile Lake..... No-access buffer zone (100 feet) along shoreline between March 1 and October 1.

East Harbor Key..... No-access buffer zone (300 feet) around northernmost island.

Lower Harbor Keys..... Idle speed only / no-wake zones in selected tidal creeks.

Eastern Lake Surprise..... Idle speed only / no-wake zone east of highway U.S. 1.

Horseshoe Key..... No-access buffer zone (300 feet) around main island (main island closed by Department of the Interior).

Marquesas Keys..... (i) No-motor zones (300 feet) around three smallest keys on western side of chain; (ii) no-access buffer zone (300 feet) around one island at western side of chain; (iii) idle speed only / no-wake zone in southwest tidal creek.

Tidal flat south of Marvin Key..... No-access buffer zone on tidal flat.

Mud Keys..... (i) Idle speed only /

	no-wake zones in the two main tidal creeks; (ii) two smaller creeks on west side closed.
Pelican Shoal.....	No-access buffer zone out to 50 meters from shore between April 1 and August 31 (shoal closed by the Florida Game and Freshwater Fish Commission).
Rodriguez Key.....	No-motor zone on tidal flats.
Dove Key.....	No-motor zone on tidal flats; area around the two small islands closed.
Tavernier Key.....	No-motor zone on tidal flats.
Sawyer Keys.....	Tidal creeks on south side closed.
Snipe Keys.....	(i) Idle speed only / no-wake zone in main tidal creek; (ii) no-motor zone in all other tidal creeks.
Upper Harbor Key.....	No-access buffer zone (300 feet) around entire key.
East Content Keys.....	Idle speed only / no-wake zones in tidal creeks between southwesternmost keys.
West Content Keys.....	Idle speed only / no-wake zones in selected tidal creeks; no-access buffer zone in one cove.
Little Crane Key.....	No-access buffer zone (300 feet) around entire key.

Appendix IV to Subpart P of Part 922--Ecological Reserves Boundary Coordinates

One Ecological Reserve--the Western Sambos Ecological Reserve--is designated in the area of Western Sambos reef. NOAA has committed to designating a second Ecological Reserve within two years from issuance of this plan in the area of the Dry Tortugas. The establishment of a Dry Tortugas Ecological Reserve will be proposed by a notice of proposed rulemaking with a proposed boundary determined through a joint effort among the Sanctuary, and the National Park Service, pursuant to a public process involving a team consisting of managers, scientists, conservationists, and affected user groups.

The Western Sambos Ecological Reserve (based on differential Global Positioning Systems data) is located within the following geographic boundary coordinates:

* Western Sambos

Point	Latitude	Longitude
1.....	24 deg.33.70' N.....	81 deg.40.80' W
2.....	24 deg.28.85' N.....	81 deg.41.90' W
3.....	24 deg.28.50' N.....	81 deg.43.70' W
4.....	24 deg.33.50' N.....	81 deg.43.10' W

AAA(* Denotes located in State waters)

Appendix V to Subpart P of Part 922--Sanctuary Preservation Areas Boundary Coordinates

The Sanctuary Preservation Areas (SPAs) (based on differential Global Positioning Systems data) are located within the following geographic boundary coordinates:

Point	Latitude	Longitude
Alligator Reef		
1.....	24 deg.50.98 N	80 deg.36.84' W
2.....	24 deg.50.51' N	80 deg.37.35' W
3.....	24 deg.50.81' N	80 deg.37.63' W
4.....	24 deg.51.23' N	80 deg.37.17' W

Catch and release fishing by trolling only is allowed in this SPA.

Carysfort/South Carysfort Reef

1.....	25 deg.13.78' N	80 deg.12.00' W
2.....	25 deg.12.03' N	80 deg.12.98' W
3.....	25 deg.12.24' N	80 deg.13.77' W
4.....	25 deg.14.13' N	80 deg.12.78' W

* Cheeca Rocks

1.....	24 deg.54.42' N	80 deg.36.91' W
2.....	24 deg.54.25' N	80 deg.36.77' W
3.....	24 deg.54.10' N	80 deg.37.00' W
4.....	24 deg.54.22' N	80 deg.37.15' W

Coffins Patch

1.....	24 deg.41.47' N	80 deg.57.68' W
2.....	24 deg.41.12' N	80 deg.57.53' W
3.....	24 deg.40.75' N	80 deg.58.33' W
4.....	24 deg.41.06' N	80 deg.58.48' W

Conch Reef

1.....	24 deg.57.48' N	80 deg.27.47' W
2.....	24 deg.57.34' N	80 deg.27.26' W
3.....	24 deg.56.78' N	80 deg.27.52' W
4.....	24 deg.56.96' N	80 deg.27.73' W

Catch and release fishing by
trolling only is allowed in
this SPA.

Davis Reef

1.....	24 deg.55.61' N	80 deg.30.27' W
2.....	24 deg.55.41' N	80 deg.30.05' W
3.....	24 deg.55.11' N	80 deg.30.35' W
4.....	24 deg.55.34' N	80 deg.30.52' W

Dry Rocks

1.....	25 deg.07.59' N	80 deg.17.91' W
2.....	25 deg.07.41' N	80 deg.17.70' W
3.....	25 deg.07.25' N	80 deg.17.82' W
4.....	25 deg.07.41' N	80 deg.18.09' W

Grecian Rocks

1.....	25 deg.06.91' N	80 deg.18.20' W
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2.....	25 deg.06.67' N	80 deg.18.06' W
3.....	25 deg.06.39' N	80 deg.18.32' W
4.....	25 deg.06.42' N	80 deg.18.48' W
5.....	25 deg.06.81' N	80 deg.18.44' W

* Eastern Dry Rocks

1.....	24 deg.27.92' N	81 deg.50.55' W
2.....	24 deg.27.73' N	81 deg.50.33' W
3.....	24 deg.27.47' N	81 deg.50.80' W
4.....	24 deg.27.72' N	81 deg.50.86' W

The Elbow

1.....	25 deg.08.97' N	80 deg.15.63' W
2.....	25 deg.08.95' N	80 deg.15.22' W
3.....	25 deg.08.18' N	80 deg.15.64' W
4.....	25 deg.08.50' N	80 deg.16.07' W

French Reef

1.....	25 deg.02.20' N	80 deg.20.63' W
2.....	25 deg.01.81' N	80 deg.21.02' W
3.....	25 deg.02.36' N	80 deg.21.27' W

* Hen and Chickens

1.....	24 deg.56.38' N	80 deg.32.86' W
2.....	24 deg.56.21' N	80 deg.32.63' W
3.....	24 deg.55.86' N	80 deg.32.95' W
4.....	24 deg.56.04' N	80 deg.33.19' W

Looe Key

1.....	24 deg.33.24' N	81 deg.24.03' W
2.....	24 deg.32.70' N	81 deg.23.85' W
3.....	24 deg.32.52' N	81 deg.24.70' W
4.....	24 deg.33.12' N	81 deg.24.81' W

Molasses Reef

1.....	25 deg.01.00' N	80 deg.22.53' W
2.....	25 deg.01.06' N	80 deg.21.84' W
3.....	25 deg.00.29' N	80 deg.22.70' W
4.....	25 deg.00.72' N	80 deg.22.83' W

* Newfound Harbor Key

1.....	24 deg.37.10' N	81 deg.23.34' W
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2.....	24 deg.36.85' N	81 deg.23.28' W
3.....	24 deg.36.74' N	81 deg.23.80' W
4.....	24 deg.37.00' N	81 deg.23.86' W

* Rock Key

1.....	24 deg.27.48' N	81 deg.51.35' W
2.....	24 deg.27.30' N	81 deg.51.15' W
3.....	24 deg.27.21' N	81 deg.51.60' W
4.....	24 deg.27.45' N	81 deg.51.65' W

* Sand Key

1.....	24 deg.27.58' N	81 deg.52.29' W
2.....	24 deg.27.01' N	81 deg.52.32' W
3.....	24 deg.27.02' N	81 deg.52.95' W
4.....	24 deg.27.61' N	81 deg.52.94' W

Catch and release fishing by
trolling only is allowed in
this SPA.

Sombrero Key

1.....	24 deg.37.91' N	81 deg.06.78' W
2.....	24 deg.37.50' N	81 deg.06.19' W
3.....	24 deg.37.25' N	81 deg.06.89' W

Catch and release fishing by
trolling only is allowed in
this SPA.

(* denotes located in State waters)

Appendix VI to Subpart P of Part 922--Special-Use Areas Boundary
Coordinates and Use Designations

The Special-use Areas (based on differential Global Positioning
Systems data) are located within the following geographic boundary
coordinates:

Point	Latitude	Longitude
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Conch Reef (Research Only)

1.....	24 deg.56.83' N	80 deg.27.26' W
2.....	24 deg.57.10' N	80 deg.26.93' W
3.....	24 deg.56.99' N	80 deg.27.42' W
4.....	24 deg.57.34' N	80 deg.27.26' W

Eastern Sambos (Research Only)

1.....	24 deg.29.84' N	81 deg.39.59' W
2.....	24 deg.29.55' N	81 deg.39.35' W
3.....	24 deg.29.37' N	81 deg.39.96' W
4.....	24 deg.29.77' N	81 deg.40.03' W

Looe Key (Research Only)

1.....	24 deg.34.17' N	81 deg.23.01' W
2.....	24 deg.33.98' N	81 deg.22.96' W
3.....	24 deg.33.84' N	81 deg.23.60' W
4.....	24 deg.34.23' N	81 deg.23.68' W

Tennessee Reef (Research Only)

1.....	24 deg.44.77' N	80 deg.47.12' W
2.....	24 deg.44.57' N	80 deg.46.98' W
3.....	24 deg.44.68' N	80 deg.46.59' W
4.....	24 deg.44.95' N	80 deg.46.74' W

Appendix VII to Subpart P of Part 922--Areas To Be Avoided Boundary
Coordinates

Point	Latitude	Longitude
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In The Vicinity of the Florida
Keys
(Reference Charts: United
States 11466, 27th Edition--
September 1, 1990 and United
States 11450, 4th Edition--
August 11, 1990)

1.....	25 deg.45.00' N	80 deg.06.10' W
2.....	25 deg.38.70' N	80 deg.02.70' W
3.....	25 deg.22.00' N	80 deg.03.00' W
4.....	25 deg.00.20' N	80 deg.13.40' W
5.....	24 deg.37.90' N	80 deg.47.30' W
6.....	24 deg.29.20' N	81 deg.17.30' W
7.....	24 deg.22.30' N	81 deg.43.17' W
8.....	24 deg.28.00' N	81 deg.43.17' W
9.....	24 deg.28.70' N	81 deg.43.50' W
10.....	24 deg.29.80' N	81 deg.43.17' W
11.....	24 deg.33.10' N	81 deg.35.15' W
12.....	24 deg.33.60' N	81 deg.26.00' W

13.....	24 deg.38.20' N	81 deg.07.00' W
14.....	24 deg.43.20' N	80 deg.53.20' W
15.....	24 deg.46.10' N	80 deg.46.15' W
16.....	24 deg.51.10' N	80 deg.37.10' W
17.....	24 deg.57.50' N	80 deg.27.50' W
18.....	25 deg.09.90' N	80 deg.16.20' W
19.....	25 deg.24.00' N	80 deg.09.10' W
20.....	25 deg.31.50' N	80 deg.07.00' W
21.....	25 deg.39.70' N	80 deg.06.85' W
22.....	25 deg.45.00' N	80 deg.06.10' W

In the Vicinity of Key West
Harbor
(Reference Chart: United
States 11434, 21st Edition--
August 11, 1990)

23.....	24 deg.27.95' N	81 deg.48.65' W
24.....	24 deg.23.00' N	81 deg.53.50' W
25.....	24 deg.26.60' N	81 deg.58.50' W
26.....	24 deg.27.75' N	81 deg.55.70' W
27.....	24 deg.29.35' N	81 deg.53.40' W
28.....	24 deg.29.35' N	81 deg.50.00' W
29.....	24 deg.27.95' N	81 deg.48.65' W

Area Surrounding the Marquesas
Keys
(Reference Chart: United
States 11434, 21st Edition--
August 11, 1990)

30.....	24 deg.26.60' N	81 deg.59.55' W
31.....	24 deg.23.00' N	82 deg.03.50' W
32.....	24 deg.23.60' N	82 deg.27.80' W
33.....	24 deg.34.50' N	82 deg.37.50' W
34.....	24 deg.43.00' N	82 deg.26.50' W
35.....	24 deg.38.31' N	81 deg.54.06' W
36.....	24 deg.37.91' N	81 deg.53.40' W
37.....	24 deg.36.15' N	81 deg.51.78' W
38.....	24 deg.34.40' N	81 deg.50.60' W
39.....	24 deg.33.44' N	81 deg.49.73' W
40.....	24 deg.31.20' N	81 deg.52.10' W
41.....	24 deg.28.70' N	81 deg.56.80' W
42.....	24 deg.26.60' N	81 deg.59.55' W

Area Surrounding the Dry
Tortugas Islands
(Reference Chart: United
States 11434, 21st Edition--

August 11, 1990)

43.....	24 deg.32.00' N	82 deg.53.50' W
44.....	24 deg.32.00' N	83 deg.00.05' W
45.....	24 deg.39.70' N	83 deg.00.05' W
46.....	24 deg.45.60' N	82 deg.54.40' W
47.....	24 deg.45.60' N	82 deg.47.2' W
48.....	24 deg.42.80' N	82 deg.43.90' W
49.....	24 deg.39.50' N	82 deg.43.90' W
50.....	24 deg.35.60' N	82 deg.46.40' W
51.....	24 deg.32.00' N	82 deg.53.50' W

Appendix VIII to Subpart P of Part 922--Marine Life Rule [As Excerpted
From Chapter 46-42 of the Florida Administrative Code]

- 46-42.001 Purpose and Intent; Designation of Restricted Species;
Definition of ``Marine Life Species."
46-42.002 Definitions.
46-42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish.
46-42.0035 Live Landing and Live Well Requirements.
46-42.0036 Harvest in Biscayne National Park.*
46-42.004 Size Limits.
46-42.005 Bag Limits.
46-42.006 Commercial Season, Harvest Limits.
46-42.007 Gear Specifications and Prohibited Gear.
46-42.008 Live Rock.*
46-42.009 Prohibition on the Taking, Destruction, or Sale of Marine
Corals and Sea Fans.

*--Part 42.0036 was not reproduced because it does not apply to the
Sanctuary.

*--Part 42.008 was not reproduced because it is regulated pursuant
to this Part 922.163(2)(ii).

- 46-42.001 Purpose and Intent; Designation of Restricted Species;
Definition of ``Marine Life Species".--

(1) (a) The purpose and intent of this chapter are to protect and
conserve Florida's tropical marine life resources and assure the
continuing health and abundance of these species. The further intent of
this chapter is to assure that harvesters in this fishery use nonlethal
methods of harvest and that the fish, invertebrates, and plants so
harvested be maintained alive for the maximum possible conservation and
economic benefits.

(b) It is the express intent of the Marine Fisheries Commission that
landing of live rock propagated through aquaculture will be allowed
pursuant to the provisions of this chapter.

(2) The following fish species, as they occur in waters of the state

and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

- (a) Moray eels--Any species of the Family Muraenidae.
- (b) Snake eels--Any species of the Genera *Myrichthys* and *Myrophis* of the Family Ophichthidae.
- (c) Toadfish--Any species of the Family Batrachoididae.
- (d) Frogfish--Any species of the Family Antennariidae.
- (e) Batfish--Any species of the Family Ogcocephalidae.
- (f) Clingfish--Any species of the Family Gobiesocidae.
- (g) Trumpetfish--Any species of the Family Aulostomidae.
- (h) Cornetfish--Any species of the Family Fistulariidae.
- (i) Pipefish/seahorses--Any species of the Family Syngnathidae.
- (j) Hamlet/seabass--Any species of the Family Serranidae, except groupers of the genera *Epinephalus* and *Mycteroperca*, and seabass of the genus *Centropristis*.
- (k) Basslets--Any species of the Family Grammistidae.
- (l) Cardinalfish--Any species of the Family Apogonidae.
- (m) High-hat, Jackknife-fish, Spotted drum, Cubbyu--Any species of the genus *Equetus* of the Family Sciaenidae.
- (n) Reef Croakers--Any of the species *Odontocion dentex*.
- (o) Sweepers--Any species of the Family Pempheridae.
- (p) Butterflyfish--Any species of the Family Chaetodontidae.
- (q) Angelfish--Any species of the Family Pomacanthidae.
- (r) Damselfish--Any species of the Family Pomacentridae.
- (s) Hawkfish--Any species of the Family Cirrhitidae.
- (t) Wrasse/hogfish/razorfish--Any species of the Family Labridae, except hogfish, *Lachnolaimus maximus*.
- (u) Parrotfish--Any species of the Family Scaridae.
- (v) Jawfish--Any species of the Family Opistognathidae.
- (w) Blennies--Any species of the Families Clinidae or Blenniidae.
- (x) Sleepers--Any species of the Family Eleotrididae.
- (y) Gobies--Any species of the Family Gobiidae.
- (z) Tangs and surgeonfish--Any species of the Family Acanthuridae.
- (aa) Filefish/triggerfish--Any species of the Family Balistes, except gray triggerfish, *Balistidae capricus*.
- (bb) Trunkfish/cowfish--Any species of the Family Ostraciidae.
- (cc) Pufferfish/burrfish/balloonfish--Any of the following species:
 - 1. Balloonfish--*Diodon holocanthus*.
 - 2. Sharpnose puffer--*Canthigaster rostrata*.
 - 3. Striped burrfish--*Chilomycterus schoepfi*.
- (3) The following invertebrate species, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:
 - (a) Sponges--Any species of the Class Demospongia, except sheepswool, yellow, grass, glove, finger, wire, reef, and velvet sponges, Order Dictyoceratida.
 - (b) Upside-down jellyfish--Any species of the Genus *Cassiopeia*.

(c) Siphonophores/hydroids--Any species of the Class Hydrozoa, except fire corals, Order Milleporina.

(d) Soft corals--Any species of the Subclass Octocorallia, except sea fans *Gorgonia flabellum* and *Gorgonia ventalina*.

(e) Sea anemones--Any species of the Orders Actinaria, Zoanthidea, Corallimorpharia, and Ceriantharia.

(f) Featherduster worms/calcareous tubeworms--Any species of the Families Sabellidae and Serpulidae.

(g) Star-shells--Any of the species *Astraea americana* or *Astraea phoebia*.

(h) Nudibranchs/sea slugs--Any species of the Subclass Opisthobranchia.

(i) Fileclams--Any species of the Genus *Lima*.

(j) Octopods--Any species of the Order Octopoda, except the common octopus, *Octopus vulgaris*.

(k) Shrimp--Any of the following species:

1. Cleaner shrimp and peppermint shrimp--Any species of the Genera *Periclimenes* or *Lysmata*.

2. Coral shrimp--Any species of the Genus *Stenopus*.

3. Snapping shrimp--Any species of the Genus *Alpheus*.

(l) Crabs--Any of the following species:

1. Yellowline arrow crab--*Stenorhynchus seticornis*.

2. Furcate spider or decorator crab--*Stenocionops furcata*.

3. Thinstripe hermit crab--*Clibanarius vittatus*.

4. Polkadotted hermit crab--*Phimochirus operculatus*.

5. Spotted porcelain crab--*Porcellana sayana*.

6. Nimble spray or urchin crab--*Percnon gibbesi*.

7. False arrow crab--*Metoporphaphis calcarata*.

(m) Starfish--Any species of the Class Asteroidea, except the Bahama starfish, *Oreaster reticulatus*.

(n) Brittlestars--Any species of the Class Ophiuroidea.

(o) Sea urchins--Any species of the Class Echinoidea, except longspine urchin, *Diadema antillarum*, and sand dollars and sea biscuits, Order Clypeasteroidea.

(p) Sea cucumbers--Any species of the Class Holothuroidea.

(q) Sea lillies--Any species of the Class Crinoidea.

(4) The following species of plants, as they occur in waters of the state and in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, are hereby designated as restricted species pursuant to Section 370.01(20), Florida Statutes:

(a) *Caulerpa*--Any species of the Family Caulerpaceae.

(b) *Halimeda* / mermaid's fan / mermaid's shaving brush--Any species of the Family Halimedaceae.

(c) Coralline red algae--Any species of the Family Corallinaceae.

(5) For the purposes of Section 370.06(2)(d), Florida Statutes, the term "marine life species" is defined to mean those species designated as restricted species in subsections (2), (3), and (4) of this rule.

Specific Authority 370.01(20), 370.027(2), 370.06(2)(d), F.S. Law Implemented 370.01(20), 370.025, 370.027, 370.06(2)(d), F.S. History--

New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.002 Definitions.-- As used in this rule chapter:

(1) "Barrier net," also known as a "fence net," means a seine used beneath the surface of the water by a diver to enclose and concentrate tropical fish and which may be made of either nylon or monofilament.

(2) "Drop net" means a small, usually circular, net with weights attached along the outer edge and a single float in the center, used by a diver to enclose and concentrate tropical fish.

(3) "Hand held net" means a landing or dip net as defined in Rule 46-4.002(4), except that a portion of the bag may be constructed of clear plastic material, rather than mesh.

(4) "Harvest" means the catching or taking of a marine organism by any means whatsoever, followed by a reduction of such organism to possession. Marine organisms that are caught but immediately returned to the water free, alive, and unharmed are not harvested. In addition, temporary possession of a marine animal for the purpose of measuring it to determine compliance with the minimum or maximum size requirements of this chapter shall not constitute harvesting such animal, provided that it is measured immediately after taking, and immediately returned to the water free, alive, and unharmed if undersize or oversize.

(5) "Harvest for commercial purposes" means the taking or harvesting of any tropical ornamental marine life species or tropical ornamental marine plant for purposes of sale or with intent to sell. The harvest of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limit shall constitute prima facie evidence of intent to sell.

(6) "Land," when used in connection with the harvest of marine organisms, means the physical act of bringing the harvested organism ashore.

(7) "Live rock" means rock with living marine organisms attached to it.

(8) "Octocoral" means any erect, nonencrusting species of the Subclass Octocorallia, except the species *Gorgonia flabellum* and *Gorgonia ventalina*.

(9) "Slurp gun" means a self-contained, handheld device that captures tropical fish by rapidly drawing seawater containing such fish into a closed chamber.

(10) "Total length" means the length of a fish as measured from the tip of the snout to the tip of the tail.

(11) "Trawl" means a net in the form of an elongated bag with the mouth kept open by various means and fished by being towed or dragged on the bottom. "Roller frame trawl" means a trawl with all of the following features and specifications:

(a) A rectangular rigid frame to keep the mouth of the trawl open while being towed.

(b) The lower horizontal beam of the frame has rollers to allow the trawl to roll over the bottom and any obstructions while being towed.

(c) The trawl opening is shielded by a grid of vertical bars spaced

no more than 3 inches apart.

(d) The trawl is towed by attaching a line or towing cable to a tongue located above or at the center of the upper horizontal beam of the frame.

(e) The trawl has no doors attached to keep the mouth of the trawl open.

(12) "Tropical fish" means any species included in subsection (2) of Rule 46-42.001, or any part thereof.

(13) "Tropical ornamental marine life species" means any species included in subsections (2) or (3) of Rule 46-42.001, or any part thereof.

(14) "Tropical ornamental marine plant" means any species included in subsection (4) of Rule 46-42.001.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History--New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.003 Prohibition of Harvest: Longspine Urchin, Bahama Starfish.-- No person shall harvest, possess while in or on the waters of the state, or land any of the following species:

(1) Longspine urchin, *Diadema antillarum*.

(2) Bahama starfish, *Oreaster reticulatus*.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History--New 1-1-91, Amended 7-1-92.

46-42.0035 Live Landing and Live Well Requirements.--

(1) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall land such marine organism alive.

(2) Each person harvesting any tropical ornamental marine life species or any tropical ornamental marine plant shall have aboard the vessel being used for such harvest a continuously circulating live well or aeration or oxygenation system of adequate size and capacity to maintain such harvested marine organisms in a healthy condition.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History--New 7-1-92.

46-42.004 Size Limits.--

(1) Angelfishes.--

(a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any of the following species of angelfish, of total length less than that set forth below:

1. One-and-one-half (1 1/2) inches for:

a. Gray angelfish (*Pomacanthus arcuatus*).

b. French angelfish (*Pomacanthus paru*).

2. One-and-three-quarters (1 3/4) inches for:

a. Blue angelfish (*Holacanthus bermudensis*).

b. Queen angelfish (*Holacanthus ciliaris*).

3. Two (2) inches for rock beauty (*Holacanthus tricolor*).

(b) No person shall harvest, possess while in or on the waters of the state, or land any angelfish (Family Pomacanthidae), of total length greater than that specified below:

1. Eight (8) inches for angelfish, except rock beauty (*Holacanthus tricolor*).

2. Five (5) inches for rock beauty.

(c) Except as provided herein, no person shall purchase, sell, or exchange any angelfish smaller than the limits specified in paragraph (a) or larger than the limits specified in paragraph (b). This prohibition shall not apply to angelfish legally harvested outside of state waters or federal Exclusive Economic Zone (EEZ) waters adjacent to state waters, which angelfish are entering Florida in interstate or international commerce. The burden shall be upon any person possessing such angelfish for sale or exchange to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and any customs receipts, and to show that such angelfish originated from a point outside the waters of the State of Florida or federal Exclusive Economic Zone (EEZ) waters adjacent to Florida waters and entered the state in interstate or international commerce. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute prima facie evidence that such angelfish were harvested from Florida waters or adjacent EEZ waters for purposes of this paragraph.

(2) Butterflyfishes.--

(a) No person harvesting for commercial purposes shall harvest, possess while in or on the waters of the state, or land any butterflyfish (Family Chaetodontidae) of total length less than one (1) inch.

(b) No person shall harvest, possess while in or on the waters of the state, or land any butterflyfish of total length greater than 4 inches.

(3) Gobies--No person shall harvest, possess while in or on the waters of the state, or land any gobie (Family Gobiidae) of total length greater than 2 inches.

(4) Jawfishes--No person shall harvest, possess while in or on the waters of the state, or land any jawfish (Family Opistognathidae) of total length greater than 4 inches.

(5) Spotfin and Spanish hogfish--

(a) No person shall harvest, possess while in or on the waters of this state, or land any Spanish hogfish (*Bodianus rufus*) of total length less than 2 inches.

(b) No person shall harvest, possess while in or on the waters of this state, or land any Spanish hogfish (*Bodianus rufus*) or spotfin hogfish (*Bodianus pulchellus*) of total length greater than 8 inches.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History--New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.005 Bag limit.--

(1) Except as provided in Rule 46-42.006 or subsections (3) or (4) of this rule, no person shall harvest, possess while in or on the waters of the state, or land more than 20 individuals per day of tropical ornamental marine life species, in any combination.

(2) Except as provided in Rule 46-42.006, no person shall harvest, possess while in or on the waters of the state, or land more than one (1) gallon per day of tropical ornamental marine plants, in any combination of species.

(3) Except as provided in Rule 46-42.006, no person shall harvest, possess while in or on the waters of the state, or land more than 5 angelfishes (Family Pomacanthidae) per day. Each angelfish shall be counted for purposes of the 20 individual bag limit specified in subsection (1) of this rule.

(4)(a) Unless the season is closed pursuant to paragraph (b), no person shall harvest, possess while in or on the waters of the state, or land more than 6 colonies per day of octocorals. Each colony of octocoral or part thereof shall be considered an individual of the species for purposes of subsection (1) of this rule and shall be counted for purposes of the 20 individual bag limit specified therein. Each person harvesting any octocoral as authorized by this rule may also harvest substrate within 1 inch of the perimeter of the holdfast at the base of the octocoral, provided that such substrate remains attached to the octocoral.

(b) If the harvest of octocorals in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters is closed to all harvesters prior to September 30 of any year, the season for harvest of octocorals in state waters shall also close until the following October 1, upon notice given by the Secretary of the Department of Environmental Protection, in the manner provided in s.120.52(16)(d), Florida Statutes.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History--New 1-1-91, Amended 1-1-95.

46-42.006 Commercial Season, Harvest Limits.--

(1) Except as provided in Rule 46-42.008(7), no person shall harvest, possess while in or on the waters of the state, or land quantities of tropical ornamental marine life species or tropical ornamental marine plants in excess of the bag limits established in Rule 46-42.005 unless such person possesses a valid saltwater products license with both a marine life fishery endorsement and a restricted species endorsement issued by the Department of Environmental Protection.

(2) Persons harvesting tropical ornamental marine life species or tropical ornamental marine plants for commercial purposes shall have a season that begins on October 1 of each year and continues through September 30 of the following year. These persons shall not harvest, possess while in or on the waters of the state, or land tropical ornamental marine life species in excess of the following limits:

(a) A limit of 75 angelfish (Family Pomacanthidae) per person per day or 150 angelfish per vessel per day, whichever is less.

(b) A limit of 75 butterflyfishes (Family Chaetodontidae) per vessel per day.

(c) There shall be no limits on the harvest for commercial purposes of octocorals unless and until the season for all harvest of octocorals in federal Exclusive Economic Zone (EEZ) waters adjacent to state waters

is closed. At such time, the season for harvest of octocorals in state waters shall also close until the following October 1, upon notice given by the Secretary of the Department of Environmental Protection, in the manner provided in Section 120.52(16)(d), Florida Statutes. Each person harvesting any octocoral as authorized by this rule may also harvest substrate within 1 inch of the perimeter of the holdfast at the base of the octocoral, provided that such substrate remains attached to the octocoral.

(d) A limit of 400 giant Caribbean or ``pink-tipped" anemones (Genus *Condylactus*) per vessel per day.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History--New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.007 Gear Specifications and Prohibited Gear.--

(1) The following types of gear shall be the only types allowed for the harvest of any tropical fish, whether from state waters or from federal Exclusive Economic Zone (EEZ) waters adjacent to state waters:

(a) Hand held net.

(b) Barrier net, with a mesh size not exceeding $\frac{3}{4}$ inch stretched mesh.

(c) Drop net, with a mesh size not exceeding $\frac{3}{4}$ inch stretched mesh.

(d) Slurp gun.

(e) Quinaldine may be used for the harvest of tropical fish if the person using the chemical or possessing the chemical in or on the waters of the state meets each of the following conditions:

1. The person also possesses and maintains aboard any vessel used in the harvest of tropical fish with quinaldine a special activity license authorizing the use of quinaldine, issued by the Division of Marine Resources of the Department of Environmental Protection pursuant to Section 370.08(8), Florida Statutes.

2. The quinaldine possessed or applied while in or on the waters of the state is in a diluted form of no more than 2% concentration in solution with seawater. Prior to dilution in seawater, quinaldine shall only be mixed with isopropyl alcohol or ethanol.

(f) A roller frame trawl operated by a person possessing a valid live bait shrimping license issued by the Department of Environmental Protection pursuant to Section 370.15, Florida Statutes, if such tropical fish are taken as an incidental bycatch of shrimp lawfully harvested with such trawl.

(g) A trawl meeting the following specifications used to collect live specimens of the dwarf seahorse, *Hippocampus zosterae*, if towed by a vessel no greater than 15 feet in length at no greater than idle speed:

1. The trawl opening shall be no larger than 12 inches by 48 inches.

2. The trawl shall weigh no more than 5 pounds wet when weighed out of the water.

(2) This rule shall not be construed to prohibit the use of any bag or container used solely for storing collected specimens or the use of a single blunt rod in conjunction with any allowable gear, which rod meets

each of the following specifications:

(a) The rod shall be made of nonferrous metal, fiberglass, or wood.

(b) The rod shall be no longer than 36 inches and have a diameter no greater than $\frac{3}{4}$ inch at any point.

(3) No person shall harvest in or from state waters any tropical fish by or with the use of any gear other than those types specified in subsection (1); provided, however, that tropical fish harvested as an incidental bycatch of other species lawfully harvested for commercial purposes with other types of gear shall not be deemed to be harvested in violation of this rule, if the quantity of tropical fish so harvested does not exceed the bag limits established in Rule 46-42.005.

Specific Authority 370.027(2), F.S. Law Implemented 370.025, 370.027, F.S. History--New 1-1-91, Amended 7-1-92, 1-1-95.

46-42.009 Prohibition on the Taking, Destruction, or Sale of Marine Corals and Sea Fans; Exception; Repeal of Section 370.114, Florida Statutes.--

(1) Except as provided in subsection (2), no person shall take, attempt to take, or otherwise destroy, or sell, or attempt to sell, any sea fan of the species *Gorgonia flabellum* or of the species *Gorgonia ventalina*, or any hard or stony coral (Order Scleractinia) or any fire coral (Genus *Millepora*). No person shall possess any such fresh, uncleaned, or uncured sea fan, hard or stony coral, or fire coral.

(2) Subsection (1) shall not apply to:

(a) Any sea fan, hard or stony coral, or fire coral legally harvested outside of state waters or federal Exclusive Economic Zone (EEZ) waters adjacent to state waters and entering Florida in interstate or international commerce. The burden shall be upon any person possessing such species to establish the chain of possession from the initial transaction after harvest, by appropriate receipt(s), bill(s) of sale, or bill(s) of lading, and any customs receipts, and to show that such species originated from a point outside the waters of the State of Florida or federal Exclusive Economic Zone (EEZ) adjacent to state waters and entered the state in interstate or international commerce. Failure to maintain such documentation or to promptly produce same at the request of any duly authorized law enforcement officer shall constitute prima facie evidence that such species were harvested from Florida waters in violation of this rule.

(b) Any sea fan, hard or stony coral, or fire coral harvested and possessed pursuant to permit issued by the Department of Environmental Protection for scientific or educational purposes as authorized in Section 370.10(2), Florida Statutes.

(c) Any sea fan, hard or stony coral, or fire coral harvested and possessed pursuant to the aquacultured live rock provisions of Rule 46-42.008(3)(a) or pursuant to a Live Rock Aquaculture Permit issued by the National Marine Fisheries Service under 50 CFR Part 638 and meeting the following requirements:

(1) Persons possessing these species in or on the waters of the state shall also possess a state submerged lands lease for live rock aquaculture and a Department of Environmental Protection permit for live

rock culture deposition and removal or a federal Live Rock Aquaculture Permit. If the person possessing these species is not the person named in the documents required herein, then the person in such possession shall also possess written permission from the person so named to transport aquacultured live rock pursuant to this exception.

(2) The nearest office of the Florida Marine Patrol shall be notified at least 24 hours in advance of any transport in or on state waters of aquacultured live rock pursuant to this exception.

(3) Persons possessing these species off the water shall maintain and produce upon the request of any duly authorized law enforcement officer sufficient documentation to establish the chain of possession from harvest on a state submerged land lease for live rock aquaculture or in adjacent Exclusive Economic Zone (EEZ) waters pursuant to a federal Live Rock Aquaculture Permit.

(4) Any sea fan, hard or stony coral, or fire coral harvested pursuant to Rule 46-42.008(3)(a) shall remain attached to the cultured rock.

Specific Authority 370.027(2), F.S.; Section 6, Chapter 83-134, Laws of Florida, as amended by Chapter 84-121, Laws of Florida. Law Implemented 370.025, 370.027, F.S.; Section 6, Chapter 83-134, Laws of Florida, as amended by Chapter 84-121, Laws of Florida. History--New 1-1-95.2222